



Paper No. 4

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In re Application of  
Varriale, et al.  
Application No. 09/675,464  
Filed: September 28, 2000  
Attorney Docket No. 03768/09376

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: DECISION ON PETITION  
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This is a decision on the petition filed June 4, 2001, requesting that the above-identified application be accorded a filing date of September 28, 2000 with drawings of Figures 1-4 as a part of the original disclosure.

The application was filed on September 28, 2000. However, on April 5, 2001, the Initial Patent Examination Division mailed a "Notice of Incomplete Nonprovisional Application," stating that the application had not been accorded a filing date because the application was deposited without drawings.

As stated in MPEP § 601.01(f), it is the practice of the PTO to treat an application that contains at least one process or method claim as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence).

MPEP § 601.01(f) also states that:

A nonprovisional application having at least one claim, or a provisional application having at least some disclosure, directed to the subject matter discussed above for which a drawing is usually not considered essential for a filing date, describing drawing figure(s) in the specification, but filed without drawings will be treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g), so long as the application contains something that can be construed as a written description.

This application contains method claims, namely claims 18-29. Therefore, the application should have been treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g).

In view of the above, the "Notice of Incomplete Nonprovisional Application" mailed April 5, 2001, was mailed in error and is

hereby withdrawn.

Petitioner's argument that 2 sheets of drawings containing Figures 1-4 were filed on September 28, 2000 is not persuasive. The PTO file is the official record of papers originally filed in this application. A review of the official file reveals that no drawings were filed on September 28, 2000, since no such drawings are present in the file. An applicant alleging that a paper was filed in the PTO and later misplaced has the burden of proving the allegation by a preponderance of the evidence. The declarations relied on contain the declarants' recall of routine events which occurred more than 9 months earlier and are not more persuasive than the record of what was filed as shown by the official file.

Further, petitioner's postcard receipt contains a notation made by a PTO employee that the 2 sheets of drawings identified on the postcard were not found in the Express Mail envelope. This fact indicates that the drawings were not misplaced in the PTO, since the PTO employee who opened the Express Mail envelope recognized that 2 sheets of drawings were intended to be filed and found the drawings to be missing.

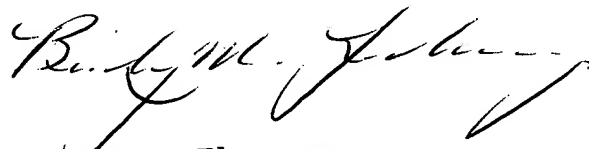
Accordingly, the petition is granted to the extent that the application will be accorded the September 28, 2000 filing date with no drawings as a part of the original disclosure of the application.

An amendment canceling all references in the specification to the omitted drawing should be filed prior to the first Office action on the merits.

Given the basis for granting this petition, the petition fee is being refunded to Deposit Account No. 50-1196, as authorized.

This application is being forwarded to the Office of Initial Patent Examination for further processing, including mailing of a filing receipt, with a filing date of September 28, 2000, and for indication on the file wrapper label that "0" sheets of drawings were present on filing. Applicant will receive appropriate notifications regarding any missing items or fees owed, and other information in due course from OIPE.

Telephone inquiries specific to this decision may be directed to Petitions Attorney Cliff Congo at (703) 305-0272.

  
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